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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

In re:)	Case No: 10-44437-LJT
)	
OSWALDO P. CRUZ,)	DC No. AEM-2
)	
Debtor(s),)	CHAPTER 13
)	
ONEWEST BANK, FSB,)	MOTION FOR RELIEF FROM
)	AUTOMATIC STAY AND FROM THE
Movant,)	CO-DEBTOR STAY
)	
v.)	Date: August 6, 2010
)	Time: 11:00 a.m.
OSWALDO P. CRUZ, Debtor; FLORENDA C.))	Ctrm: 201
CRUZ, Co-Debtor; MARTHA G. BRONITSKY,))	
Chapter 13 Trustee;)	
)	
Respondents.)	
)	

**TO THE HONORABLE LESLIE J. TCHAIKOVSKY, UNITED STATES
BANKRUPTCY JUDGE; THE DEBTORS, THE CHAPTER 13 TRUSTEE, AND ALL
INTERESTED PARTIES:**

ONEWEST BANK, FSB, its assignees and/or successors in interest, ("Movant"), by and through its counsel of record, BURNETT & MATTHEWS, LLP, hereby moves the Court for an Order granting Movant relief from the automatic stay to exercise its remedies under its Deed of Trust and California law, in order to foreclose upon and sell the Subject Property located at 7716 W Mesa Verde Lane, Las Vegas, NV 89113 ("Subject Property"). This motion is based upon the following facts and circumstances, as shown by the Declaration of Brian Burnett and exhibits attached in support thereof:

1. This Court has jurisdiction over this matter pursuant to 11 U.S.C. §§ 361 and

362 of the United States Bankruptcy Code and Rules 4001, 9013, 9014 of the Federal Rules of Bankruptcy Procedure. This is a core proceeding under 28 U.S.C. § 157(b)(2).

2. Movant is, and at all times herein mentioned was, a corporation authorized to do business in and is doing business in the State of California.

3. Oswaldo P. Cruz (hereinafter, the "Debtor") filed the above-captioned Chapter 13 case on April 19, 2010.

4. Martha G. Bronitsky ("Trustee") is the duly appointed and acting Chapter 13 Trustee in the above-captioned case.

5. Movant is the holder of a Promissory Note dated December 7, 2005, in the original principal sum of \$359,920.00 (the "Note"). The Note is secured by a duly perfected Deed of Trust of even date over the Subject Property. The Subject Property is legally described in the Deed of Trust.

6. Pursuant to the terms and conditions of the Note and Deed of Trust, the Debtor and Co-Debtor are obligated to make monthly payments on the first day of each month.

7. On or about May 1, 2010, a default occurred under the terms and conditions of the Note and Deed of Trust in that the Debtor has failed to make post-petition payments in this case.

8. According to Debtor's Schedule A filed with the Court, the fair market value of the Subject Property is \$342,000.00.

9. As shown by the declaration of Brian Burnett the amount due and owing to Movant as of July 7, 2010, was \$397,830.24.

10. A Notice of Default has recorded on August 19, 2009.

WHEREFORE, Movant prays for an Order as follows:

1. Granting Movant, its assignees and/or successors in interest immediate relief from the automatic stay pursuant to 11 U.S.C. Section 362 for all purposes necessary under state law, in order to foreclose upon and sell the Subject Property.

2. Following foreclosure, in the event that the Debtors fail to deliver up possession of the Subject Property, permitting Movant and its successors and assigns to proceed with all remedies available under state law;

3. In the alternative, if immediate relief is not granted, granting Movant and its successors and

1 assigns adequate protection;

2 4. Movant further requests that the Court waive or shorten the 14 day waiting period prescribed
3 by Federal Rule of Bankruptcy Procedure, Rule 4001(a)(3);

4 5. That this Order be binding on the Debtors and the Trustee with respect to any subsequent
5 conversion to another chapter which may affect Movant's interest in the Property;

6 6. That the Co-Debtor stay of 11 U.S.C Sec. 1301 as to Co-Debtor named above, be
7 terminated, on the same terms and conditions.

8 7. For such other and further relief as this Court deems appropriate.

9 Dated: July 16, 2010

Respectfully Submitted,

10 BURNETT & MATTHEWS LLP

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12 By: /s/Arturo E. Matthews, Jr.
13 ARTURO E. MATTHEWS, JR.
14 Attorney for Movant ONEWEST BANK, FSB
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